Supreme Court, U.S.
MOTION FILED

OCT 3 1 2008

William K. Suter,
Clerk

No. 08-440

IN THE

Supreme Court of the United States

ELEANOR BODKIN, ET AL.,

Petitioners,

v.

COOK INLET REGION, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alaska

AMICUS BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE[1]

Pursuant to Supreme Court Rule 37.2(b), *amicus curiae* moves this court for leave to file an *amicus* brief in the above-entitled matter. The petitioner has consented to the filing of this brief, but the respondent has withheld its consent. As explained below, the movant's interest arises from his writings about the law of Alaska Native corporations and from his scholarship in corporate law and corporate governance.

ARGUMENT

A corporation's charter is a three-way contract (1) between the state and the corporation; (2) between the corporation and the owners (shareholders); and (3) among the shareholders *inter se*. *Woodward v. Trustees of Dartmouth College*, 17 U.S. 518, 644 (1819) (Marshall, C.J.) ("It is then a contract within the letter of the constitution, and within its spirit also....").

Alaska Native Claims Settlement Act (ANCSA) corporations are chartered pursuant to state law. Moreover, ANCSA corporations such as respondent Cook Inlet Region, Inc., represent a neat accommodation between shareholders, the corporations, its officers, and its board of directors, one

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[1] Pursuant to Rule 37.6, amicus states that no counsel for a party authored this brief in whole or part, and no person or entity other than the amicus curiae made a monetary contribution to the preparation or submission of this brief.

arrived at through evolution of state corporate law over decades. *See, e.g.*, Douglas M. Branson, *Square Pegs in Round Holes: Alaska Native Claims Settlement Corporations Under Corporate Law*," 8 UCLA – Alaska Law Review, No. 2, 103-138 (1979) (courts should settle on a corporate law model exclusively for ANCSA corporations). *See also* Douglas M. Branson, *Still Square Pegs in Round Holes? A Look at ANCSA Corporations, Corporate Governance, and Indeterminate Form or Operation of Legal Entities*, 24 Alaska L. Rev. 203 (2007) (state corporate law model for governance purposes); Douglas M. Branson, *The Alaska Native Claims Settlement Act and 1991: A Framework for Analysis*, 3 Alaska L. Rev. 401-412 (1987) (same).

The creation by respondent Cook Inlet of a settlement trust for distribution of extraordinary payments to original shareholders is an impermissible "re-slicing" of the ANCSA pie and an unconstitutional impairment of the contract that the corporation and its charter represent.

Amicus urges that the Court issue a writ of certiorari in the instant case.

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